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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..CrA..1850/99 **सन्** **200**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	APPELLANTS: (In Jail)	1. Anjorva Satnami, S/o Sufal Satnami, aged about 52 years. 2. Toran Satnami, S/o Anjorva Satnami, aged about 33 years. 3. Naresh Satnami, S/o Anjorva Satnami, aged about 19 years. 4. Suklu Satnami, S/o Mangalu Satnami, aged about 55 years. 5. Prakash Satnami, S/o Balmukund Satnami, aged about 23 years. 6. Surji alias Surjit, S/o Balmukund Satnami, aged about 18 years. 7. Radhabai, W/o Balmukund Satnami, aged about 45 years. 8. Nemkunwarbai, W/o Balmukund Satnami, aged about 50 years. 9. Mohanibai, W/o Prakash Satnami, aged about 20 years. 10. Kondibai, W/o Siyaram Satnami, aged about 44 years.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11. Shyamkunwar Bai,
W/o Suklu Satnami,
aged about 48 years.

12. Sukhnandan Satnami,
S/o Suklu Satnami,
aged about 26 years.

13. Balladas Satnami,
S/o Anjorva Satnami,
aged about 20 years.

14. Balmukund Satnami,
aged about 58 years,
S/o Sufal Satnami.

15. Sukhcharan Satnami,
S/o Anjorva Satnami,
aged about 30 years.

All residents of Village Mogarvah P.S. Sahatpur Lohara, District Rajnandgaon, M.P. (now C.G.)

- Versus -

RESPONDENT: The State of Madhya Pradesh (now Chhattisgarh)

{Criminal appeal under Section 374 (2) of the Criminal Procedure Code}

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Sunil Kumar Sinha, JJ.

14-8-2007

Mr. N.K. Chatterjee, counsel for the appellants.

Mr. Vinay Harit, Deputy Advocate General for the State/ respondent.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mr. Alok Pandey, counsel for the objector.

Oral judgment dictated on Dais.

L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 29-6-1999 passed by the Additional Sessions Judge, Khairagarh, in Sessions Trial No.109/1997, whereby learned Additional Sessions Judge after holding that accused/ appellants guilty under Sections 148 & 302 read with Section 149 of the I.P.C., sentenced each of the accused namely, Anjorva Satnami, Toran Satnami, Naresh Satnami, Suklu Satnami, Prakash Satnami, Surji @ Surjit, Radhabai, Nemkunwar Bai, Mohani Bai, Kondi Bai, Shyamkunwar Bai, Sukhnandan Satnami, Balladas Satnami, Balmukund Satnami & Sukhcharan Satnami, to undergo R.I. for three years and to undergo imprisonment for life (rigorous) and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months, respectively.

As per the communication dated 17-7-2007 sent by the Chief Judicial Magistrate, Rajnandgaon, accused Nemkunwar Bai had expired during the pendency of this appeal. Death certificate dated 10-7-2007 issued by the Registrar (Births & Deaths) shows that accused Nemkunwar Bai had expired on 27-8-2004. Legal heirs of Nemkunwar Bai have not moved any application for prosecution of this appeal. Therefore, the appeal of accused/ appellant No.8 Nemkunwar Bai stands abated.

Case of the prosecution, in brief, is that Dehati Nalishi Ex.P-70 was given by Gautam Bai to the Sub Inspector, In-charge Police Station:

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मामला क्रमांक ....G.A.1850/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sahaspur Lohara, Camp at Village: Gaurmati, at 5.30 p.m. with allegation that on 17-2-1997 at about 10 a.m. Gautam Bai saw that accused Balmukund along with other co-accused persons was going towards the disputed field where the crop of Alsi (linseed) of Vishal & Sahdev was standing, Gautam Bai (complainant), daughter of Vishal, also went towards that field on bicycle, she saw that the accused persons were reaping the standing crop, she returned and informed her father on which her father went to the Village Kotwar to request him to accompany him for lodging report in the Police Station, however, the Kotwar refused to accompany him. Therefore, her father alone went to lodge the report, but by the time he could reach bus stand, the bus had already left, hence, he returned to his house. In the mean time, Sadhey, son of Vishal, also returned from his in-law's village Nawagaon, therefore, Vishal informed his son about the act of accused persons Balmukund & others that they are reaping the standing crop of Alsi (linseed). It was about 12 noon, Vishal had taken lunch and asked his daughter Gautam Bai to go and bring Thivra from Urayya field, after unloading Thivra at residence, she should bring the bullock cart to Mazgaon field where the accused persons were reaping the crop, they are going to Mazgaon to stop Balmukund & others. Therefore, she went to Urayya field, brought the bullock cart and unloaded Thivra, thereafter, she took the bullock cart towards Mazgaon field. She saw quarrel in the field from a distance, therefore, she stopped the bullock cart and went near the field hiding herself behind bushes. She saw that accused Balmukund, his son Prakash, Surji, Radhabai, Nemkunwar, Mohanibai, Moharbai, Santosh, Libaru, Anjorva, Toran, Naresh, Sukhcharan, Ballu, Suklu, Shyamkunwar,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sukhnandan & Kondi were attacking her brother & father. Toran was holding axe, whereas, lady accused persons were holding sickles, Prakash & Surji were holding club and Balmukund was also holding club. She saw that everyone was holding club in hand. When she reached near the place of incident, they rushed towards her, therefore, she started running, they cased her, but some how she escaped and came near the pond. She hid herself in the standing crop, thereafter, she again went to the place of occurrence, by that time, the accused persons already ran away. The dead bodies of her father & brother were lying. The accused persons by attacking with axe & Lathi, had murdered her father & brother. Thereafter, she started coming towards the village, on the way her mother met her, she informed her, they came to the village and started weeping. In the mean time, Likhan, Saukhin, Vimla, Mehtarin, Jagmohan, Mehtar & others came, they informed them, thereafter, the Kotwar was informed. By that time, it was 4 p.m. The Kotwar said that the Inspector is already in Village: Gaurmati, therefore, let us go and lodge the report. Merg intimation Ex.P-71 regarding the death of Vishal and merg intimation Ex.P-72 regarding the death of Sadhey were also recorded.

The Investigating Officer left for the scene of occurrence. Merg intimations Exs.P-18 & P-19 were also recorded and based on that, first information report Ex.P-20 was registered on 18-2-1997. After giving notices Exs.P-58 & 59 inquest Ex.P-60 on the body of Sadhey and inquest Ex.P-61 on the body of Vishal were prepared by the Investigating Officer. Bodies of Vishal & Sadhey were sent to Primary Health Centre, Khamaria under Exs.P-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

73 & P-74, respectively, where Dr. Hriday Narayan Gupta (PW-2) conducted post-mortem. He prepared post-mortem report Ex.P-2 on the body of Vishal and opined that cause of death is shock due to head & chest injuries as a result of coma. He conducted post-mortem on the body of Sadhey, prepared report Ex.P-3 and opined that cause of death is head injury producing shock, mode of death is coma. During investigation, weapons of offence at the instance of the accused persons were seized under seizure memos. Club was seized at the instance of Anjorva, Naresh, Suklu, Prakash, Surji @ Surjit, Sukhnandan & Balladas. Axe was seized at the instance of Toran. Sickles were seized at the instance of Radhabai, Nemkunwarbai, Mohanibai, Kondibai & Shyamkunwar Bai.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Kawardha, who in turn committed the case to the Sessions Judge, Rajnandgaon, from where learned Additional Sessions Judge, Khairagarh received the case on transfer for trial.

The prosecution in order to establish charges against the accused persons examined 19 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C., in which they denied the material appearing against them in the prosecution evidence, they examined seven defence witnesses in their defence and stated that they are innocent, they have been falsely implicated in the crime. Accused Balmukund stated that on the fateful day he was not in the village. Accused Anjorva also stated that on the date of incident, he was not in the village.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Mr. Chatterjee, learned counsel for the appellants and Mr. Shukla, learned Additional Public Prosecutor on behalf of the State/ respondent.

At the outset, Mr. Chatterjee has not disputed the homicidal death of Vishal & Sadhey. Moreover, Dr. Hriday Narayan Gupta (PW-2) has stated in his evidence that on 18-2-1997, he was working as Assistant Surgeon, on that day he conducted post-mortem on the body of Vishal, there was incised wound in the size of 3 x 1 cms. 3 x 1.5 cms. on nose, incised wound on occipital region in the size of 12 x 3 cms. x deep up to bone, occipital bone was fractured, clotted blood was present, bruise in the size of 12 x 5 cms. Injury Nos.1 to 3 were caused by hard & sharp object and injury No.4 was caused by hard & blunt object. Cause of death was head & chest injury and report is Ex.P-2.

Dr. Hriday Narayan Gupta (PW-2) has also stated that on the same day, he conducted post-mortem on the body of Sadhey, there was incised wound in the size of 10 x 4 cms. x deep up to bone on 10 cms. of right ear occipital region, bone of occipital region was fractured, clotted blood was present, the injury was caused by hard and sharp object. Cause of death was head injury and coma. In view of the above evidence of the doctor, it is established that the death of Vishal & Sadhey was homicidal in nature.

As far as involvement of the accused persons in the crime in question is concerned, there is only one eyewitness namely, Gautam Bai (PW-1), daughter of deceased Vishal & sister of deceased Sadhey. She has stated in her evidence that on the fateful day at about 9-10 a.m. she was taking bath

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

at her residence, she saw that accused persons Balmukund, Prakash, Surji, Radhabai, Mohanibai, Nemkunwar, Moharbai, Toran, Anjorva, Sukhnandan, Sukhcharan, Naresh, Balla, Santosh, Libaru, Shantakunwar, Kondibai & Sukalu were going towards Mazgaon for reaping their crop of Alsi (linseed). When she saw that they were going towards their field, she followed them on a bicycle. She saw that all the 18 accused persons were reaping the standing crop, she returned and informed her father that 18 persons are reaping their standing crop. At that time, her father was reaping the crop of Thivra in Urayya field, after she informed, her father came to the village. He had gone to the village Kotwar, but he declined to cooperate, therefore, her father went towards Ranvirpur Village Bus Stand, but he could not catch the bus, as the bus had already left, hence, her father returned to house. In the mean time, at about 11-11.30 a.m. her brother Sadhey returned from Nawagaon, his father-in-law's place, on which her father asked him let us go and ask the accused persons not to reap their crop. At about 1-1.30 p.m. her father and brother went to the field. Her father asked her to go to Urayya field and bring the bullock cart, therefore, she went to Urayya field, brought the bullock cart along with one Likhan, they unloaded Thivra from the bullock cart in the Kothar. She asked Likhan that let us go to the Mazgaon field, but he declined to accompany her, therefore, she alone started for going to the field, where her father & brother had already gone. She saw from a distance that Bulmukund & others, in all 18 persons, were attacking her father & brother, she stopped the bullock cart near the field of Surit, thereafter, she went towards the field and saw the incident hiding herself behind one field. When she was hiding, she saw that accused Balmukund, Prakash, Surjit,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Moharbai, Radhabai, Mohanibai, Nemkunwar, Anjorva, Toran, Balla, Sukhcharan, Naresh, Sukalu, Sukhnandan, Kondi, Libaru, Santosh, Shyamkunwar were attacking her father & brother with club, axe, Tabbal & Genda. Her father & brother fell down on the ground, she was watching from the other field. When the accused persons saw her, they rushed towards her saying she should also be finished. They chased her, she ran towards the pond and stopped there. The accused persons returned to the field. When she returned to the field, she saw that the accused persons had already ran away. Bodies of her father & brother were lying. She started coming to the village. Her mother met her on the way near the field of Surit, she informed her mother about the incident. They returned to the house. Hearing their cries, the villagers came, they informed the villagers, thereafter, the Village Kotwar was called and he was also informed. By that time it was already 4.30-5 p.m., the Kotwar informed her that the Station House Officer is already in Village: Gaurmati, therefore, the merg intimation was given to the Station House Officer at Village: Gaurmati. There was a dispute between her family and family of the accused persons regarding the land where the incident took place. In this case, other witnesses have turned hostile. The deceased persons were closely related to the accused persons.

Learned counsel for the appellants argued that in this case there is only one witness namely, Gautam Bai (PW-1), she is related to the deceased persons, therefore, she is interested witness, as such, explicit reliance cannot be placed on her evidence.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, learned Deputy Advocate General and learned counsel for the objector supported the judgment of the trial Court.

Law in respect of a related witness is well settled. Testimony of a related witness cannot be rejected out rightly, solely on that ground, but when the evidence of a related witness is not corroborated by any other ocular or circumstantial evidence, then the Court is required to scrutinize the evidence of such a witness with care and circumspection in order to ascertain truthfulness of the evidence of such a witness. When the evidence of Gautam Bai (PW-1) is put to close scrutiny, we are of the considered opinion that the evidence of this witness does not inspire confidence of the Court, explicit reliance cannot be placed on this witness for the following reasons: -

Gautam Bai (PW-1) has stated in her evidence that by the time her brother returned and her father took lunch, it was already 1-1.30 p.m., her father said that they are going to Mazgaon field in order to stop the accused persons from reaping the standing crop, she should to go to Urayya field to bring the bullock cart which was standing there. Therefore, she left for Urayya field, which was at a distance of about 1-1½ kms. from there. She along with Likhan brought the bullock cart loaded with Thevra crop, thereafter, they unloaded Thevra crop at their residence in the village. She requested Likhan to accompany her, but he declined to accompany her, therefore, she alone took the bullock cart to Mazgaon field where the accused persons were reaping the standing crop for which her father & brother had already left, the same was also at a distance of 1-1½ kms. from

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आदेश पत्रक (पूर्वानुबद्ध)

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the village. As per the prosecution version, the incident already started at about 2 p.m. Looking to the distance of the place of incident and time taken by Gautam Bai to go to Urayya field in order to bring the bullock cart which was at a distance of 1-1½ kms., then the bullock cart was brought to the village, Thevra was unloaded, thereafter, she took the bullock cart to Mazgaon, the disputed field, which was also at a distance of 1-1½ kms., it was not possible for her to reach to the disputed field by 2 p.m.

Therefore, it is clear from the evidence of Gautam Bai (PW-1) that Mazgaon field, the place of incident, and Urayya field were at equal distance i.e. 1-1½ kms. from their residence, both the fields were on opposite direction from the village. Hence, by the time Gautam Bai could reach to Urayya field to fetch the bullock cart, deceased Vishal & Sadhey, her father & brother, had already reached to the place of incident, thereafter, only she started coming back to their residence from Urayya field, she unloaded Thevra crop from the bullock cart at the residence, thereafter, again she left for the place of incident. In the circumstances, it is evident from the above evidence of Gautam Bai that her father & brother had already reached to the place of incident at least one hour before she could reach to the place of incident, thereby the incident already started one hour before she could reach to the disputed field. Even her evidence is evasive in respect of the time taken by her to go to Urayya field to fetch the bullock cart, to come back and then to go to Mazgaon field. This attitude of Gautam Bai (PW-1) shows that in fact she had not witnessed the incident. This shows that by the time Gautam Bai reached to the disputed field, the quarrel was already over and the accused persons left the place. That is why, she has given an omnibus statement

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

regarding the attack made by the accused persons. She has stated that all the accused persons were attacking with Tabbal, axe, Lathi & sickles which is contrary to the Dehati Nalishi (Ex.P-70) given by her. Had she witnessed the incident, she ought to have definitely stated about some of the accused persons that which accused person was holding which weapon, who attacked first and who attacked to whom. Therefore, the evidence of this witness is shaky and does not inspire confidence. Explanation given by this witness that when she was watching the attack, the accused persons saw her, three persons chased her, but she ran away and stopped in the pond, is also improbable for the reason that she being a lady, had the accused persons chased her, they could have easily caught her and assaulted.

Even Likhan (PW-9), who was working in the Urayya field of Vishal, has stated in his evidence that he along with Gautam Bai brought Thevra & bullock cart, and unloaded at the residence in Kothar, at that time, it was already 2 p.m. At about 3 p.m. Bhagobai, wife of Vishal came and requested him to accompany her to the field, but he declined. Thereafter, his wife asked him to accompany her. When his wife, Bhagobai & himself were going, he heard the cries of Gautam Bai. Therefore, according to this witness also, by the time the bullock cart was unloaded, it was already 2 p.m., by that time the quarrel had already started in the field of Mazgaon.

In the circumstances, presence of Gautam Bai (PW-1) in the disputed field at the time of incident cannot be believed.

Second ground on which the evidence of Gautam Bai (PW-1) cannot be believed and does not inspire confidence is that in Dehati Nalishi Ex.P-70,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

she has categorically stated that accused Toran was carrying axe, whereas lady accused namely, Radhabai, Nemkunwar, Mohanibai, Kondibai & Shyamkunwar were holding sickles and Balmukund, Prakash & Surji @ Surjit were holding Lathis, all were attacking. But in the Court evidence para 4, she has stated that all the accused persons were attacking with club, axe, Tabbal & Genda. In cross-examination para 14 she has stated that she had not given report to the Police to the effect that particular accused was holding particular weapon, if it is written so in the report, then it is incorrect, how it has been written she does not know. She has denied that part of the Dehati information report which pertains to holding of weapons by the accused persons. She has made an omnibus statement that all the accused persons were attacking.

Evidence of Gautam Bai (PW-1) also does not inspire confidence for the reason that she has stated in her evidence that all the 18 accused persons were holding weapons, they were attacking her father & brother with those weapons, whereas, as per the post-mortem report, deceased Sadhey sustained only one injury i.e. incised wound on occipital region which has to be caused by sharp & hard object. As per the medical evidence, deceased Vishal sustained four injuries out of which three were incised wounds on nose, left ear & occipital region, and there was a bruise. Therefore, as per the version of Gautam Bai (PW-1), if all the 18 accused persons attacked the deceased persons with club, axe, Tabbal & Genda, then definitely, there must have been more number of injuries on the bodies of the deceased persons.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.1850/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

There is no other ocular or circumstantial evidence to corroborate the testimony of Gautam Bai (PW-1). Even though, weapons of offence are said to have been recovered at the instance of the accused persons, but as far as clubs & Lathis are concerned, the doctor has specifically stated that the injuries found on the bodies of the deceased persons could not be caused by blunt object. Whereas, sharp object is concerned, as per the F.S.L. report, no blood was found on any sickle or axe. Therefore, on the basis of recovery of sickles & axe, the accused persons from whom those articles were recovered, cannot be connected with the crime in question.

For the foregoing reasons, the judgment of the trial Court convicting the accused persons under Sections 148 & 302 read with Section 149 of the I.P.C. cannot be sustained.

In the result, the appeal filed by the accused/appellants namely, Anjorva Satnami, Toran Satnami, Naresh Satnami, Suklu Satnami, Prakash Satnami, Surji @ Surjit, Radhabai, Mohani Bai, Kondi Bai, Shyamkunwar Bai, Sukhnandan Satnami, Balladas Satnami, Balmukund Satnami & Sukhcharan Satnami succeeds, conviction and sentences imposed upon them under Sections 148 & 302 read with Section 149 of the I.P.C. are set aside, they are acquitted of the said charges.

- Appellants Toran Satnami, Prakash Satnami, Surji @ Surjit & Balmukund are in detention since 19th February, 1997.
- Other appellants namely, Anjorva Satnami, Naresh Satnami, Suklu Satnami, Sukhnandan Satnami, Balladas Satnami & Sukhcharan

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.1850/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Satnami were in detention up to 4-10-1999. They are again in detention since 31st July, 2007. ➢ Lady accused namely, Radhabai, Mohani Bai, Kondi Bai & Shyamkunwar Bai were in detention up to 23-8-1999. They are again in detention since 31st July, 2007. ➢ All the accused/appellants be set at liberty forthwith, unless required to be detained in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**
Soma		

P.T.O.